

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TYLER C. FRICK,

Plaintiff,

v.

OPINION and ORDER

DISCOVER FINANCIAL SERVICES, INC.,

24-cv-551-wmc

Defendant.

The court held a telephonic preliminary pretrial conference on October 16, 2024. Plaintiff Tyler C. Frick appeared, representing himself. Discover Financial Services, Inc. was represented by Attorney Rachel Cash. The court and the parties discussed several issues that were pending on the docket and the general case schedule.

First, the court set a briefing schedule on the pending motion to dismiss. *See* Dkt. 53. The court noted that Mr. Frick had filed two briefs in opposition to the motion, the first on the same day the motion was filed. Dkt. 55 & Dkt. 63. The court explained the parties needed to make their full arguments in single filings and should avoid filing multiple briefs; otherwise, the docket gets confused. To streamline these filings, the court STRUCK Mr. Frick's two briefs and RESET the briefing schedule to allow Mr. Frick to compose a single brief with all of his complete arguments. Plaintiff's brief in opposition is due November 6. Defendant's brief in reply is due November 18.

Second, the court discussed discovery. Defendant asked to stay discovery pending the motion to dismiss, and the court denied that request. This court generally does not stay discovery pending motions to dismiss. After reviewing the docket, the court does not view this case as one of the rare exceptions to the general rule. The court explained to Mr. Frick that he

should consult the Federal Rules of Civil Procedure to understand how to take discovery in this case. Rules 26, 33, and 34 are of particular use for civil cases like this one. Discovery needs to be in writing and served on the other party. Attorney Cash confirmed that she would accept service of discovery via e-mail.

Third, the court DENIED Mr. Frick's motions to issue a subpoena. Dkt. 57, Dkt. 62, & Dkt. 67. The court denied these motions for a couple of reasons. The primary reason is that these motions seek relief that are not the proper subject of a subpoena. Mr. Frick's subpoenas request investigative files that are at the heart of this case. Whether Mr. Frick is entitled to these files and whether defendant wrongfully withheld these files are questions that will be resolved by Judge Conley as the case progresses. So, the requests for subpoena are premature. A secondary reason is that Mr. Frick can seek legitimate discovery from defendant via discovery requests—discussed above. He does not need a subpoena to seek relevant, proportional discovery concerning his claims. So, the requests for subpoena are also unnecessary.

Fourth, the court DENIED Mr. Frick's motion for assistance in recruiting counsel without prejudice, subject to renewal. The court explained that, thus far, Mr. Frick was handling the demands of the case better than most pro se litigants. Because the case is still in its early stages, the court did not see a basis to recruit counsel at this point in time. If the case progresses, Mr. Frick may renew his motion as the demands of the case get heavier.

Finally, the court SET this case for another telephonic status conference for November 25, 2024, at 2:00 p.m. The court will expect an update on the parties' discovery efforts and will set the next deadlines in the case. Until then, the parties should focus on briefing the

motion to dismiss and taking discovery. They should hold off on filing other miscellaneous filings for relief that can be addressed at the next conference.

IT IS ORDERED that:

1. Plaintiff's briefs in opposition to defendant's motion to dismiss, Dkt. 55 & Dkt. 63 are STRUCK. The briefing schedule for the motion to dismiss, Dkt. 53, is RESET: Plaintiff's brief in opposition is due November 6. Defendant's brief in reply is due November 18.
2. Plaintiff's motions to issue a subpoena, Dkt. 57, Dkt. 62, Dkt. 67 are DENIED.
3. Plaintiff's motion to recruit counsel, Dkt. 58, is DENIED.
4. The court will hold a telephonic status conference on November 25, 2024, at 2:00 p.m.

Entered this 16th day of October, 2024.

BY THE COURT:

/s/

ANITA MARIE BOOR
Magistrate Judge